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Administrative Law

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ADMINISTRATIVE LAW

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INTRODUCTION

THE TWENTIETH century has witnessed an enormous growth in state administrative process. This has made bureaucracy, which Weber[1] considered the *sine qua non* of rationality, a vitally important component of the structure and function of government of the modern state. Downs, writing in the Weber tradition, asserts:

> Without increased bureaucratic regulation, such forces as technological change, urbanization, and more intensive division of labor would be either impossible, or would lead to greater social disorganization and a narrower range of choice for the individual.[2]

The state of Illinois, too, has been caught up in this proliferation of administrative agencies. Indeed, one writer describes the proliferation as "nothing short of fantastic."[3] There are two statutes in Illinois dealing generally with administrative law; one deals with filing rules and regulations and the other deals with judicial review.[4] For a state of the magnitude and complexity of Illinois, the legislative effort is indeed a modest one.[5]

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1. *See generally* S.M. Miller, MAX WEBER (SELECTIONS) (1963) and compare the following statements by Weber: Bureaucracy is "the type of rational legal administrative staff [and] is capable of application in all kinds of situations and contexts." *Id.* at 65.

Bureaucracy is "the means of carrying community action" over into rationally ordered "societal action" . . . "it is a power instrument of the first order." *Id.*

2. DOWNS, INSIDE BUREAUCRACY 254 (1967). Cited in GELLHORN AND BYSE, ADMINISTRATIVE LAW CASES AND COMMENTS (5th ed. 1970).

3. Freehling, *Administrative Procedure Legislation in Illinois,* 57 ILL. B.J. 364 (1969). At the time this article was written there were in excess of 130 state administrative agencies concerned with a quite mind-boggling array of social issues.

4. Rules and Regulations of State Agencies, ILL. REV. STAT. ch. 127, §§ 263 *et seq.* (1971), and the Administrative Review Act, ILL. REV. STAT. ch. 110 §§ 264 *et seq.* (1971).

5. Hunt, *Administrative Procedure—An Additional Plea,* 57 ILL. B.J. 644,

The basic problem, therefore, that one is confronted with in reviewing "some" of the recent administrative law decisions is that on the one hand there is "too little" in the way of a general statutory scheme; on the other hand, there is "too much" in the way of particular legislative enactments: "[a]ll of the provisions in the many statutes [govern] the more than 100 administrative agencies in Illinois and [relate] to administrative procedure. Some of the statutes will tell us how to initiate a proceeding; some will not. Some will make clear when and what sort of hearing is to be held; some will not. Some will be specific as to how the outcome is to be adjudicated; some will not."[6]

In this survey of recent Illinois decisions on administrative law, it is well to keep in mind the disparate nature of the cases emerging as they do, in many instances, in what Mr. Hunt calls the "too much" segment of the regulatory scheme of legislation. We have not attempted to include all the recently decided cases, but only those that have struck the writer as being of more than casual interest. It is obvious in exercising this discretion there are some cases that have been omitted and that, in the judgment of others, could well have been inserted. The cases considered will center around four topics: scope of judicial review; standing to secure judicial review; right to hearing; and bias or prejudice as a disqualification.

SCOPE OF JUDICIAL REVIEW

Rhinehart v. Board of Education[7]

In this case a hearing board ordered that three parcels of land be annexed to the Bloomington School District. Under Illinois law the

645 (1968-1969), has felicitiously summed up the import of the statutory scheme in these terms: "The first of these [acts] deals only with format, size of pages and so on, not substance, and merely undertakes to assure that you can put your hands on the rules and regulations you are concerned with, *if* the particular agency has done what it is supposed to do and if you either take a trip to the Secretary of State's office or pay for a certified copy. And the Administrative Review Act by its terms applies only to such agencies as have been created by statutes specifically adopted by it. Not all statutes do this, meaning there is a variety of ways to appeal from administrative orders (with all the consequent hazards for the non-specialist and his client)."

6. *Id.* at 645-46.

7. — Ill. App. 2d —, 271 N.E.2d 104 (1971).

board is given the power to determine the relevant factual circumstances under which its power of redistricting might be used:

> The Hearing Board (a) shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto, and as to the ability of the districts affected to meet the standards of recognition as prescribed by the Superintendent of Public Instruction, (b) shall take into consideration the division of funds and assets which will result from any change of boundaries, and the will of the people of the area affected, and (c) shall determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils should such change in boundaries be granted.[8]

The court's function under the circumstances of this case was made easier because many of the crucial facts were stipulated by counsel. What makes the case somewhat unusual is the fact that "there were no persons residing on any of the three tracts at the time petitions were filed."[9] The plaintiff felt that inasmuch as this was conceded the case fell within the rule in *Board of Education v. Scott*.[10] In that case there was also an absence of pupils in the districts affected by a redistricting ruling. The same Illinois appellate court there stated that it was virtually impossible to contemplate how the evidence could have been "available with respect to the educational welfare of pupils."[11]

Judge Trapp distinguished the *Scott* case on grounds that the "tracts here involved appear to be an integral part of the main activity of the City of Bloomington and the *residential potential* is immediate"[12] (emphasis added). Construing the statute,[13] he wrote that the "statutory intent" did not suggest "that the single fact that there were no pupils in a territory would preclude a showing of the benefits and detriments to an immediately potential student population."[14]

Judge Trapp then bludgeoned the plaintiff's case with the proposition that the courts do not "reweigh" evidence submitted to an administrative organ unless the order issued pursuant to such a hearing is against the manifest weight of the evidence. While the applica-

8. ILL. REV. STAT. ch. 122, § 7-2.6 (1969).
9. — Ill. App. 2d —, 271 N.E.2d 104, 105 (1971).
10. 105 Ill. App. 2d 192, 244 N.E.2d 821 (1969).
11. — Ill. App. 2d —, 271 N.E.2d 104, 107 (1971).
12. *Id.*
13. ILL. REV. STAT. ch. 122, § 7-2.6 (1969).
14. — Ill. App. 2d —, 271 N.E.2d 104, 108 (1971).

tion of this test to the facts of the case is not entirely clear, in the context of this case one can reasonably assert that school redistricting orders will be upheld even in the absence of pupils as long as there is the possibility of an "immediate potential student population."

Zejmowicz v. County Board of School Trustees[15]

In *Zejmowicz* the board refused to allow the detachment of certain territory from the Erie Community School District.[16] This case represents in some degree a departure from *Rhinehart*. The court reviewed the essential facts, which were stipulated, and upheld the circuit court's determination that there appeared to be no "justifiable reason for the denial of the request for detachment."[17] The court's synthesizing of the evidence here seems to have been predicated on the fact that the stipulation of the parties raised a single issue: whether the interests of the schools of the area are furthered and whether the "educational welfare"[18] of the district is safeguarded by granting or not granting the relief requested. The court held that the board's determination was, in effect, based upon "no valid reason." The board actually offered very little justification for its refusal to detach the territory in question. In addition to the stipulated facts, a board member stated that the board objected to detachment because it would object to having "any portion removed from the district"[19] and, *inter alia*, that the area was actually voted into the district by a "majority of the area."[20] Not surprisingly, therefore, Judge Alloy conceded that administrative agencies do have broad latitude in "formulating" their decisions and that reviewing courts are to a large degree legally and functionally limited from substituting their own decisions for those entrusted to the agency; nevertheless, the court recognized its "responsibility of finding that the decisions are in fact based upon some valid reasons."[21] Judge Alloy

15. — Ill. App. 2d —, 272 N.E.2d 783 (1971).

16. At the same time plaintiff also petitioned the Rock Island County Board of School Trustees to annex the same lot to a school district under their jurisdiction (District No. 100); this was approved by that board.

17. — Ill. App. 2d —, 272 N.E.2d 783, 786 (1971).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

also added that the defendant board had not submitted any evidence justifying its denial of the petitioners' request for detachment.[22]

The court then summarized the record before it and concluded that the interests of the schools and pupils in the area would be furthered by detachment even though no pupils actually live on the petitioners' property at the present time. The court took cognizance of the "apparent" fact that the property "would be developed and settled and children and pupils will be present therein in the future."[23] We should note, however, that this deviates from the *Scott* case in the sense that there are no "actual" pupils in these areas at the time the decision was rendered. It is not clear, therefore, whether the potential student population in *Zejmowicz* should meet the "immediacy" test that we might infer from the *Rhinehart* case.

It is possible to see the *Rhinehart* and *Zejmowicz* cases as resting on a slightly broader basis—if we are prepared to be lax about the "immediately potential" distinction in *Rhinehart*. It is possible to see in *Zejmowicz* that the court places great weight on facts in the record indicating geographic, social and economic integration of the new district with the community. "The community interest is centered in the area of District No. 100."[24] In *Rhinehart*, Judge Trapp also alludes to the fact that the three tracts of land annexed are part of the metropolitan area of Bloomington.

Board of Education v. Board of School Trustees[25]

In *Board of Education v. Board of School Trustees*, the problem of school annexations and detachments poses more crucially and importantly the scope and appropriateness of the judicial function in this area. In this case the annexation of the tract of land, if allowed to stand, would have resulted in the Caterpillar Tractor Agency being assessed a higher tax rate in the City of Joliet school district than it actually paid in Troy.[26]

Under the school code which regulates detachment and annexa-

22. *Id.*

23. *Id.*

24. *Id.* It should be noted that the board did conduct an independent finding of fact on this score which must have been of value to the court.

25. — Ill. App. 2d —, 271 N.E.2d 87 (1971).

26. *Id.* at 89.

tion, the county board of trustees is empowered to:

> hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts affected to meet the standards of recognition as prescribed by the Superintendent of Public Instruction, and shall take into consideration the *division of funds and assets* which will result from the change of boundaries and shall determine whether it is to the best interest of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted[27] (emphasis added).

Under *Wheeler v. County Board of School Trustees*,[28] the state courts have the legal power and duty to review administrative orders of county boards of school trustees that are contrary to the manifest weight of the evidence. And the test to be applied in such a case is that of *Ottowa Township High School District v. County Board of School Trustees*[29] in which it was held that "the petition is to be granted only where the benefit derived by the annexing and affected area clearly outweighs the detriment resulting to the losing district and the surrounding community as a whole."[30] This is an exceedingly flexible standard, for many intangible as well as tangible factors will attend a determination of the relative weight to be accorded to the notions of benefit and detriment in such circumstances. Indeed the court itself admitted that, examining the record, "we cannot say that the decision of the board that 'the benefit derived by the annexation and affected area clearly outweighs the detriment resulting to the losing district' was clearly against the manifest weight of the evidence."[31]

The issues of benefit and detriment are interestingly not reasoned in terms of students—actual or prospective. Rather the issue centered around how tax revenues of the affected school districts would be influenced by the proposed annexation-detachment action. The "only consideration here," said Judge Scott "is a monetary one."[32] So that, as the court realistically implies, the disposition of available fiscal or tax revenues is a vitally important factor in deciding whether a detachment action innures to the benefit or the detriment of a school district.

27. ILL. REV. STAT. ch. 122, § 7-6 (1969).
28. 62 Ill. App. 2d 467, 210 N.E.2d 609 (1965).
29. 106 Ill. App. 2d 439, 246 N.E.2d 138 (1969).
30. *Id.* at 445, 246 N.E.2d at 141.
31. — Ill. App. 2d —, 271 N.E.2d 87, 90 (1971).
32. *Id.*

The court was no doubt disquieted by implications for school financing of such a flexible legislative guidepost to the courts. In Judge Scott's words: "The court is constrained to observe that while it feels this indeed is a poor way to handle school financing, the legislature clearly intended that proceedings of this nature were to be followed to assist one district to the detriment of the other."[33] The court's disquiet on this score is a well taken critique of the adequacy of legislative draftsmanship in this context. And this point has even more acuity when judged against the court's own ruling in this case and the limited scope of review it is accorded under the statute and the Administrative Review Act. Examining the record, Judge Scott held that the court was unable to judge whether the decision by the board of trustees viz. that the benefit derived by the annexation and affected area clearly outweighs the detriment resulting to the losing district, was against the manifest weight of the evidence.[34] If we concede the inadequacy of the detachment-annexation method of allocating fiscal resources for school districts, it is perhaps interesting to see the extent that a court will examine the record where the apparent benefits to one school district as a result of an attachment results in a severe detriment to the losing district, and to determine to what extent, if any, the "against the manifest-weight-of-evidence" rule will be extended in this area of the law.

Board of Review v. Property Tax Appeal Board[35]

State law provides the following administrative procedure in the event that a taxpayer is dissatisfied with property tax assessments made by local officials:

> In any county other than a county of over 1,000,000 population . . ., any taxpayer dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes, or any taxing body that has an interest in the decision of the board of review on an assessment made by any local assessment officer, may . . . appeal such decision to the Property Tax Appeal Board for review. Such taxpayer or taxing body, hereinafter called the appellant, shall file a petition with the clerk of the Property Tax Appeal Board, setting forth specifically the facts upon which he bases his objection to the decision of the board of review, together with a statement of the contentions of law which he desires to raise, and the relief he

33. *Id.*
34. *Id.*
35. 48 Ill. 2d 513, 272 N.E.2d 32 (1971).

requests.[36]

The appeal board is also empowered to establish procedures of an informal character to secure that the tax assessment it makes is a "correct" one.[37] Furthermore, the statute provides that "[a] hearing shall be granted if any party to the appeal so requests, and, upon motion of any party to the appeal or by direction of the Property Tax Appeal Board, any appeal may be set down for a hearing, with proper notice to the interested parties."[38]

In *Board of Review v. Property Tax Appeal Board*, the board of review sought review of the findings of the state-created Property Tax Appeal Board that had significantly reduced the assessed valuation on seven out of eight parcels of land owned by the Metropolitan Sanitary District of Greater Chicago. The Sanitary District had appealed the board's assessment first to the board of review and then to the appeal board where the total reduction sustained was $1,311,795. The board of review filed its complaint, as it is empowered to do under Illinois law,[39] and argued, *inter alia*, that there was no "competent substantial evidence to support the findings and orders of the Property Tax Appeal Board."[40] Because decisions of the appeal board are to be supported by the "weight of the evidence" presented to it, the court reviewed the evidence on the record. In doing this, the court does not have to give that degree of deference to the conclusions of the board. The test appears to be one designated to impel a more careful degree of judicial overview. Thus the test leaves out the term "manifest" or "substantial" in the judicial function implicit in a review of the determination of the board's decision. On the other hand, in assessing the weight of the evidence, the court noted that the appeal board was not bound by formal rules of evidence. Therefore, testimony gleaned from wit-

36. ILL. REV. STAT. ch. 120, § 592.1 (1967). In addition, the clerk of the appeal board is required to mail a copy of the petition to the board of review whose decision is being appealed. *Id.*, at § 592.2.

37. *Id.*

38. *Id.* at § 592.3. The decisions of the appeal board are to be based upon "equity" and the "weight of the evidence" and "not upon constructive fraud" and are moreover subject to review under the provisions of the Administrative Procedure Act. *Id.* at § 592.4.

39. *Id.* at § 592.

40. Board of Review v. Property Tax Appeal Bd., 48 Ill. 2d 513, 519, 272 N.E.2d 32, 36 (1971).

nesses deemed competent for the board's factual determinations were accepted by the court, inasmuch as the plaintiffs offered no evidence to challenge the accuracy of the testimony of an attorney for the Sanitary District.

Mr. Justice Schaeffer then carefully "weighed" the evidence, including the pertinent history of the Sanitary Canal in Chicago, and concluded that it was "appropriate for the Appeal Board to admit and consider evidence on the economic value of the extension and improvements to the Sanitary District in its sanitation and electrical production functions."[41]

What is analytically difficult to discern in this case is the manner in which Justice Schaeffer so carefully reviewed the facts and pertinent history of the Sanitary District and then obviously determined that the decision of the appeal board was based upon the "weight of the evidence."[42] Is this test of assessing the judicial value of the evidence more than that required by the Administrative Review Act's provisions regarding the scope of review? These provisions provide that "the findings and conclusions of the administrative agency of questions of fact shall be held to be prima facie true and correct,"[43] because the decisions of the state appeal board are "subject to review under the provisions of the Administrative Review Act."[44] A further confusing dimension is infused by the board of review's contention that "there is no competent *substantial* evidence to support the findings and orders of the Property Tax Appeal Board"[45] (emphasis added). Justice Schaeffer declared that the court does "not agree,"[46] but what specifically is the court not agreeing to? That there is no "competent" evidence? Or that there is no "substantial" evidence? Or that the decision is not against the "weight of the evidence?" The most that can be said for the rampant conceptual confusions on this score is that the court does, in fact, give us a careful, well articulated, thoroughly judicious ap-

41. *Id.* at 521-22, 272 N.E.2d at 37.
42. *Id.*
43. ILL. REV. STAT. ch. 110, § 274 (1969).
44. ILL. REV. STAT. ch. 120, § 592.4 (1967).
45. 48 Ill. 2d 513, 519, 272 N.E.2d 32, 36 (1971).
46. *Id.*

praisal of the facts but without explicit reference to the conceptual standards that are supposed to guide the judicial task in this area.[47]

Ducks Unlimited, Inc. v. Grabiec[48]

In *Ducks Unlimited Inc. v. Grabiec*, appellant Ducks Unlimited filed a claim with the State of Illinois, Division of Unemployment Compensation for a refund of unemployment tax and contributions paid in during the years 1965-67. The gravamen of the claim was that Ducks Unlimited was exempt from making these payments under the Illinois Compensation Act.[49] On the administrative level the Ducks Unlimited claim was denied by the director of labor on the basis of a report made by the director's representative. The report was made available to Ducks Unlimited after a protest had been made to the director about his representative's unfavorable decision. The plaintiff then sought judicial review of the order under the Illinois Administrative Review Act which defines the scope of judicial review and reads in part as follows: "The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct."[50] In this context a reviewing court's power to set aside the finding of an administrative body is usually predicated upon the determination that the findings of the agency are against the manifest weight of the evidence. Moreover, the court does not as a rule "reweigh" the evidence in order to determine whether the determination is against the manifest weight of the evidence. The true test, says Justice Goldberg,[51] is to determine, without reweighing the evidence presented, whether the determination is "just" and "reasonable." Or put differently, if the court finds that the decision on the stipulated facts is unjust or unreasonable, it will be construed as being against the manifest weight of evidence. Justice Goldberg thus implies that an administrative decision will be

47. The learned justice might have been constrained to place more reliance on the usefulness of these tests had evidence been offered challenging the accuracy of the testimony of the Sanitary District's attorney. *Id.*

48. — Ill. App. 2d —, 272 N.E.2d 657 (1971).

49. Illinois Unemployment Compensation Act, ILL. REV. STAT. ch. 48, § 331, § 221 (1969).

50. ILL. REV. STAT. ch. 110, § 274 (1969).

51. Justice Goldberg cites in this regard Davern v. Civil Service Com., 47 Ill. 2d 469, 471, 269 N.E.2d 713 (1970).

deemed to be unreasonable and/or unjust if that decision is "without substantial foundation in the evidence."[52] Accordingly, a reviewing court has a duty to set such an order aside.

The court then proceeded to examine the findings of the director's representative as presented in the record. And here an important factor emerged: the statutory language of § 221 of the Illinois Unemployment Compensation Act was drawn, according to the court, "directly and verbatum" from the United States Internal Revenue Code.[53] Ducks Unlimited had been granted an exception under § 101(6) of the Internal Revenue Code which was the predecessor of § 501(c)(3) upon which the Illinois statute was based. How much weight ought the director then to have given to the findings of the Internal Revenue Service? The director argued that the decision of the I.R.S. to grant the exemption did not prevent him from denying the exemption under the state statute. The point, it is submitted, cannot be assailed: the formal rulings of the Internal Revenue Service cannot be binding in any formal sense upon the director of a state agency. Nevertheless, such a determination and the criteria by which it was reached can be useful as a guide to administrative decision-making when, as in the instant case, the model for the state statute was so patently that of the federal Internal Revenue Code. In the context of this agency's practices and procedures, however, the director's representative had drawn attention to the fact that (1) the Illinois provision was modeled upon the Internal Revenue Service Code and (2) that as a result of this relationship, federal rulings had to be accorded "much weight" in making determinations under the section.[54]

The court, then, was prepared not to disregard the federal exemption to Ducks Unlimited even if the director was inclined to pay it scant regard. Justice Goldberg stated that "the fact that Ducks Un-

52. — Ill. App. 2d —, 272 N.E.2d 657, 659-60 (1971).

53. *Id.* at 660. The pertinent language in Sec. 221 reads as follows: The term "employment" shall not include service performed in the employ of a corporation . . . organized and operated exclusively for . . . scientific . . . or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation. ILL. REV. STAT. ch. 48 § 331 (1969).

54. — Ill. App. 2d —, 272 N.E.2d 657, 660 (1971).

limited has obtained the federal exemption is an important factor in determining its status here."[55] This is, of course, a sensible posture to assume when one is charged with assuming the "reasonable" and "just" inferences to be drawn from evidence before a reviewing court. For it implies that where an enabling statute is modeled upon a pre-existing statute, a reviewing court may well consider or at least accord some weight to determinations made under the model. Moreover, where an agency has made explicit references to interpretations of the statute upon which its own enabling act is modeled, then that agency will have to provide compelling reasons as to why it, in a particular case, refuses to follow the previously invoked standard.

In the *Ducks Unlimited* case, the court also carefully reviewed the evidence in setting aside the director's findings. This was done despite the fact that exemption statutes have to be strictly construed with all "debatable questions resolved in favor of taxation."[56] Thus the court concluded that "the decision of the Director to impose the tax upon Ducks Unlimited is not just and reasonable in the light of all the evidence presented."[57]

Davenport v. Board of Fire and Police Commissioners[58]

In *Davenport v. Board of Fire and Police Commissioners* the appellate court reviewed the findings of the Board of Fire and Police Commissioners of Peoria and determined that although the evidence presented to the board was conflicting, these inconsistencies were not sufficiently against the manifest weight of all the evidence considered by the board for the court to set aside its decision to suspend Davenport.

In this case, it appears that a certain Mike Young of dubious reputation had allegedly intimidated officer Davenport's family. The officer, then, off duty and armed, evidently paid the errant Young a visit and gave him a stern warning coupled with some measure of physical consideration to ensure that the message had been ade-

55. *Id.*
56. *Id.* at 662.
57. *Id.*
58. 2 Ill. App. 3d 864, 278 N.E.2d 212 (1972).

quately communicated. Young later reported Davenport to the police and Davenport was suspended by the Board of Fire and Police Commissioners of the city of Peoria after charges had been filed against him by the superintendent of police.[59] After a hearing, officer Davenport became ex-officer Davenport when the commission found him guilty of "conduct unbecoming an officer which might be detrimental to the service."[60]

Plaintiff Davenport filed for administrative review of the board's decision to the Circuit Court of Peoria County and the court affirmed the decision of the board. The plaintiff then appealed. The main thrust of the appeal was that the commission was in error when it declined to allow "impeachment evidence to be presented against"[61] the prosecution witnesses and when it did not permit impeachment evidence "to the effect that there was a conspiracy among a group of negroes for the purpose of getting the plaintiff's job."[62] As the court correctly pointed out, the record was replete with admissions about the character of the witness—clearly sufficient for the commission to assess its value and reliability. On cross-examination Young admitted that "he had been arrested for throwing a piece of concrete at a city squad car. . . ."[63] And a witness offering to corroborate Young's testimony "admitted on cross-examination that he had been arrested so many times that he lost count."[64]

The argument that Davenport was prevented from showing a "conspiracy" against him was also incredibly weak. Again, as Judge Scott shows, the record clearly indicates that, according to the testimony of two witnesses, statements were made by Young and his cohorts that he was going to "get officer Davenport."[65]

Judge Scott in reviewing the record found nothing "unreasonable or arbitrary" in officer Davenport's dismissal by the board for "cause." The court also declared its formula used for reviewing administrative finding of fact:

59. *Id.* at 867, 278 N.E.2d at 214.
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.* at 868, 278 N.E.2d at 214.

> In reviewing the findings of administrative agency, [*sic*] courts can only set aside findings if it is against the manifest weight of the evidence and may not review the evidence or make independent determination of facts.[66]

In applying this test, Judge Scott noted that the only evidence supporting the plaintiff's case before the commission was his own testimony.

The commission had to decide, in effect, whether to believe officer Davenport or the witnesses whom the court itself acknowledged could not be "classed as desirable citizens."[67] The court would not question the commission's conclusion on this score unless it was satisfied that it was "against the manifest weight of the evidence."

A further question was whether all the evidence that the commission had before it was sufficient reason or "cause" to discharge Davenport. Here the court held that the conclusions were neither "unreasonable nor arbitrary" inasmuch as the findings clearly showed that the "plaintiff attempted to take the law into his own hands"[68] and that "[d]iscipline is not only vital but absolutely essential to this force of armed men who protect the life and property of the citizens in the city."[69] Without discipline, the court declared, the police department would become "incompetent and demoralized."[70]

North Shore Sanitary District v. Pollution Control Board[71]

In this case, the Pollution Control Board of the State of Illinois held hearings to determine whether the North Shore Sanitary District should comply with a phosphate regulation adopted by the board.[72] The district requested that the phosphate removal regulation not be applied to six of its plants until the end of 1972, because of what it termed "unreasonable hardship."[73] The Environmental

66. *Id.* at 868, 278 N.E.2d at 215.

67. *Id.*

68. *Id.* at 869, 278 N.E.2d at 216.

69. *Id.*

70. *Id.* at 869-70, 278 N.E.2d at 216.

71. 2 Ill. App. 3d 797, 277 N.E.2d 754 (1972).

72. Regulation 70-6, Ill. Pollution Control Bd. (Jan. 6, 1971). This regulation provides that at the end of 1971 a certain percentage of phosphates shall be removed from water and effluent discharged into Lake Michigan.

73. 2 Ill. App. 3d 797, 799, 277 N.E.2d 754, 755 (1972).

Protection Act, § 1041, provides for judicial review in accordance with the Illinois Administrative Review Act with this modification: that a petitioner is afforded review directly in the appellate court rather than through the circuit court.[74] The district sought direct review to the Appellate Court of the Second District. As this case was the first to arise under the act, the Sanitary District requested the court to set out procedural guidelines that would control all future hearings. The agency, on the other hand, requested that the court establish a rule of almost total deference to the expertise of the board.[75]

The board had held its hearing in which the Sanitary District called three witnesses on its behalf who gave detailed testimony affirming the claim of unreasonable hardship. The agency produced no witnesses on its own behalf. Its decision was that a one year delay would have a harmful effect on Lake Michigan and the costs of erecting temporary facilities for removing phosphates would be substantially less than suggested by the testimony. This conclusion was reached after considering "data, opinions, and testimony adduced at former hearings"[76] none of which was reflected in the record before the court.

The Sanitary District, therefore, sought to have the board's decision set aside on the ground that the record before the court which contained only the testimony of their three experts could not sustain the determination of the board, and that, the board's decision was against the manifest weight of the evidence as reflected in the record. The court agreed. Justice Moran posed the problem with the utmost clarity: whether an administrative agency in Illinois has the legal power to base its decision on facts, data and testimony that do not appear in the record.[77] Justice Moran could find no such authority in either state administrative law or indeed upon the analogy of federal administrative law, and cited, in this connection, the well established federal rule that administrative decisions must be supported by substantial evidence contained in the record.[78]

74. ILL. REV. STAT. ch. 111½, § 1041 (1971).

75. 2 Ill. App. 3d 797, 800, 277 N.E.2d 754, 756 (1972).

76. *Id.*

77. *Id.* at 800-01, 277 N.E.2d 754, 757 (1972).

78. *Id.* Under Illinois law an administrative organ must base its decision on

The court also held that the board itself had no obligation to predicate its decision on evidence that had been admitted at the hearing. Justice Moran said:

> The rationale for restricting findings to evidence in the record is that due process of law requires that all parties have an opportunity to cross-examine witnesses and to offer evidence in rebuttal. . . . Consequently, according to Illinois law, the Board cannot properly base its findings upon information not found in the record.[79]

This decision is an agreeable one. It should not have hampered the functioning of the board in any substantial degree; the board could have included in the record such data and testimony from its files to support its determination because of the particular circumstances of this case.[80]

STANDING TO SECURE JUDICIAL REVIEW

Department of Registration & Education v. Aman[81]

In this case the defendant-appellee Aman, a professional license investigator of the Illinois Department of Registration & Education (hereinafter the department), was discharged by the department and appealed his discharge to the Civil Service Commission. The commission held a hearing at which documentary evidence as well as testimony was submitted on behalf of both Aman and the department. The commission ordered that Aman be retained in his job.

The state personnel code provides:

> All final administrative decisions of the Civil Service Commission hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act," approved May 8, 1945, as heretofore or hereafter amended.[82]

The term administrative decision is defined in the Administrative Review Act as "any decision, order or determination of any admin-

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evidence found in the record. A reviewing court may review *only* the record in order to ascertain whether agency determinations are supported by the evidence: "the courts are not authorized to reweigh the evidence or to make an independent determination of the facts. The reviewing court is limited to a consideration of the record to determine if the findings and orders of the administrative agency are against the manifest weight of the evidence. . . ." Parker v. Dep't of Registration, 5 Ill. 2d 288, 294, 125 N.E.2d 494, 497 (1955).

79. 2 Ill. App. 3d 797, 801, 277 N.E.2d 754, 757 (1972).

80. The district stipulated "that the record may take judicial notice of its own files and records, and its own orders." *Id.*

81. 3 Ill. App. 3d 784, 279 N.E.2d 114 (1972). This case is evidently one of first impression in the state courts.

82. ILL. REV. STAT. ch. 127, § 63b111a (1969).

istrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency."[83]

The problem here was whether the department had the requisite standing to secure judicial review of the commission's decision. That is, does one administrative agency of the state have standing to appeal the decision of another administrative agency?[84] Generally, a party does not have "standing" to appeal an administrative decision "unless he can show that he is 'personally aggrieved,' or show an injury or threat to a particular right of his own as distinguished from the public interest in the administration of the law."[85] Justice Trapp reasoned that this test which accounts for the law of standing is ordinarily concerned with an individual attacking an administrative action. He went on to state that where an administrative agency is a party to the litigation it is hardly appropriate to assess a "grievance or injury" in terms of a "personal" frame of reference.[86] He added that there is no "rigid general or constitutional principle that one governmental agency may not litigate the action of another agency of the same government."[87] Justice Trapp thus held that when a court has to consider the standing of an agency the test to be met is one defined in terms of an "interest" or "duty" prescribed by statute.[88]

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83. ILL. REV. STAT. ch. 110, § 264 (1969).

84. 3 Ill. App. 3d 784, 785-86, 279 N.E.2d 114, 115 (1972).

85. *Id.* at 786, 279 N.E.2d at 115, citing COOPER, STATE ADMINISTRATIVE LAW 541 (1965). The test is basically that enunciated in Justice Frankfurter's concurring opinion in Joint Anti-Facist Refugee Committee v. McGrath, 341 U.S. 123 (1951), and distinguishes, in effect, the so called Hohfeldian from the non-Hohfeldian or ideological plaintiff.

86. 3 Ill. App. 3d 784, 786, 279 N.E.2d 114, 116 (1972).

87. *Id.*

88. *Id.* Consider in this regard Professor Davis' analysis of Judge Jerome Frank's famous decision in Associated Industries v. Ickes, 134 F.2d 694 (2d Cir. 1943) where he says: "[t]he court's analysis seems both inanswerable and broadly applicable: Under Article III of the Constitution, no justiciable controversy exists unless the plaintiff shows that the challenged action invades 'a private substantive legally protected interest' but one having such an interest may be authorized by Congress 'to indicate the interest of the public' and 'such persons, so authorized are, so to speak, private Attorney Generals.'" DAVIS, ADMINISTRATIVE LAW TEXT 422 (1972). Clearly if a "duty" can be inferred from a specific instance of legislative authorization to act as a so called private attorney general, it goes without saying that an administrative agency that has a "duty" or "interest" prescribed by statute should have standing to secure judicial review in that respect. The cases cited

The court, therefore, after reviewing the relevant state and federal case law,[89] saw no bar to according the department the requisite standing if it could establish a "sufficient interest."[90] The court weighed the alternative:

> If we were to agree with the trial court, we would have the unique situation that the Department has sufficient interest to appear before the Civil Service Commission and sufficient interest to appeal an adverse Circuit Court decision to the Appellate Court if the employee first gets the case into the Circuit Court, but, at this one stage only, i.e., appeal from the Commission to the Circuit Court the Department does not have sufficient "standing" to assert its position.[91]

The court, moreover, alluded to the particular character of the interest asserted by the department by citing the language in *Samter v. Department of Public Welfare*[92] where that court stated:

> In appeals from a Civil Service Commission there should be recognition by the courts that the relationship of the executive department to its employees is involved and that the discipline of an entire department may be affected.[93]

The reliance on the *Samter* case by Justice Trapp carries with it the recognition that at least in Civil Service Commission cases the practical reasons attendant upon departmental discipline may be so important as to ensure a standing-by-necessity posture for the affected department. This, it is submitted, is sound jurisprudence for state administrative process.

Justice Craven delivered an important dissenting opinion, the main postulates of which need to be considered. Basically, Justice Craven held that the Administrative Review Act did not "expressly confer the authority for such review upon a state agency."[94] It is to be recalled that Justice Trapp discovered such authority by the language of the personnel code which suggests that "all final administrative decisions of the Civil Service Commission hereunder shall be subject to judicial review."[95] Justice Trapp furthermore construed

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by Justice Trapp clearly indicate his judgment on this score. Additionally, Justice Trapp recognized that in inter-agency conflict generally there was no appeal in the absence of a statutory imposition of a duty—without which there could be no "interest" or "responsibility." 3 Ill. App. 3d 784, 789, 279 N.E.2d 114, 118 (1972).

89. *Id.* at 786-88, 279 N.E.2d at 116-17.

90. *Id.* at 788, 279 N.E.2d at 117.

91. *Id.*

92. 9 Ill. App. 2d 363, 132 N.E.2d 810 (1956).

93. *Id.* at 374, 132 N.E.2d at 815.

94. 3 Ill. App. 3d 784, 790, 279 N.E.2d 114, 119 (1972).

95. ILL. REV. STAT. ch. 127, § 63b111a (1969).

this to include the "real parties" before the Civil Service hearing viz. the department (employer) and Aman (employee).[96] Here the majority reasoned that if the right of appeal were reserved to the employee only, it could have so stated. In the absence then of such explicit statutory prohibitions, the department (one might add, for good policy reasons) had standing to secure judicial review. But this is precisely where Justice Craven takes issue with the majority holding. He argues that a perusal of the whole statutory scheme "suggests an absence of authority of a state agency to appeal an order of the Commission."[97] Thus, argues Justice Craven, "an administrative department or officer has no standing to challenge a decision of a superior or coordinate board or tribunal absent a particular statutory mandate granting such authority."[98] The learned dissenting Justice is indubitably correct in his perusal and interpretation of the relevant statutes for it is clear that Justice Trapp has provided the "looser" construction by focusing upon one aspect of the statute to the exclusion of overall statutory language. But it may well be asked whether Justice Craven has met what we characterize as the "standing by necessity" argument? His only attempt on this score is to distinguish *Samter* on the basis that there was involved an appeal from a judicial decision and not, as he puts it, establishing "the existence of authority to initiate administrative review."[99]

Wilkins v. Department of Public Aid[100]

In *Wilkins v. Department of Public Aid,* plaintiff Queen Ester Wilkins applied to the Cook County Department of Public Aid to certify her as eligible for participation in the federal food stamp program. The Cook County department refused. She then filed a notice of an appeal for an administrative hearing before the Illinois Department of Public Aid, complaining, *inter alia,* that Cook County's denial of certification of her eligibility for food stamps was erroneous. She therefore requested that her household be certified as eligi-

96. 3 Ill. App. 3d 784, 789, 279 N.E.2d 114, 118 (1972).

97. *Id.* at 790, 279 N.E.2d at 119.

98. *Id.* at 791, 279 N.E.2d at 119, citing Davis, *Standing of a Public Official to Challenge Agency Decisions: A Unique Problem of State Administrative Law,* 16 AD. L. REV. 163 (1963).

99. *Id.* at 791, 279 N.E.2d at 120. Justice Trapp meets this objection on its own logic, *supra* note 93 and accompanying text.

100. 51 Ill. 2d 88, 280 N.E.2d 706 (1972).

ble for food stamps and also that "she be awarded the bonus value of the food stamps to which she would have been entitled had her request for foodstamp certification been properly processed in the first instance."[101]

The Illinois Department of Public Aid decided that the plaintiff had established that her household was eligible for certification but declined to go along with the plaintiff's claim for retroactive benefits.[102] The plaintiff appealed under the Administrative Review Act[103] to the Circuit Court of Cook County, which affirmed the decision of the department.

On further review before the Illinois Supreme Court, Chief Justice Underwood held that the plaintiff was not entitled to judicial review of the department's holding under the Administrative Review Act because the act is applicable only when it is adopted by "express reference by the act creating or conferring jurisdiction upon the administrative agency involved."[104]

The Public Aid Code does provide that the Administrative Review Act shall be applicable to proceedings for judicial review of final administrative decisions of the Department of Public Aid, but the code enumerates specific areas to which it is meant to apply and omits largesse in the form of food stamps.[105] Chief Justice Underwood, therefore, concluded that the federal food stamp program did not fall within the ambit of these articles expressly incorporating the Administrative Review Act and had not been "adopted with respect to administrative decisions of the Illinois Department of Public Aid concerning benefits under the federal food stamp program"[106] and as such, no right to judicial review could be inferred from the conduct and procedures of the agency itself.

This case establishes in unequivocal terms that agency action with regard to the federal food stamp program is not subject to judi-

101. *Id.* at 88-9, 280 N.E.2d at 707.

102. *Id.* at 89, 280 N.E.2d at 708.

103. ILL. REV. STAT. ch. 110, § 264 *et seq.* (1969).

104. 51 Ill. 2d 88, 90, 280 N.E.2d 706, 708 (1972).

105. ILL. REV. STAT. ch. 23 § 11-8.7 (1969). The Administrative Review Act applies to: Article III (Aid to the Aged, Blind or Disabled), Article IV (Aid to Families with Dependent Children), and Article V (Medical Assistance). *Id.*

106. 51 Ill. 2d 88, 91, 280 N.E.2d 706, 708 (1972).

cial review in state courts because (1) there is no express statutory language that incorporates the Administrative Review Act and (2) where the agency itself has not seen fit to incorporate the act, it cannot be invoked. It does seem somewhat anomalous that "some" forms of welfare largesse are covered by the act and that others—not that generically dissimilar—are not.[107]

RIGHT TO A HEARING

Chicago Housing Authority v. Harris[108]

In *Chicago Housing Authority v. Harris*, the defendant-appellant Ruby Harris entered into a month-to-month tenancy agreement with the Chicago Housing Authority that was automatically renewable. The apartment was situated in a federally subsidized low-rent "housing complex"[109] that was owned and operated by the plaintiff-appellee. The tenancy agreement provided that the tenancy could be terminated by either party provided that 15 days written notice prior to such termination be given.

On March 12, 1968, the plaintiff informed the defendant that she would have to vacate the apartment by March 31, 1968. The defendant refused to comply and plaintiff then instituted eviction proceedings. It appears in the record that prior to the termination of the defendant's tenancy agreement the plaintiff's project manager advised her that her tenancy would be terminated "because of poor housekeeping and the family's anti-social activities and lack of parental supervision."[110] The trial court granted the plaintiff's motion for summary judgment and the defendant appealed on the ground that the plaintiff, in failing to grant her a hearing to determine the veracity of the charges, had denied her due process rights to which she was entitled.[111]

The defendant claimed that the Department of Housing and Urban Development had issued circular instructions providing, *inter alia*, that "all such dwelling leases shall include provisions . . . that

107. This implication raises the viability in state process of the right-privilege distinction.

108. 49 Ill. 2d 274, 275 N.E.2d 353 (1971).

109. *Id.*

110. *Id.* at 275, 275 N.E.2d at 354.

111. *Id.*

any tenant grievance or appeal from management's decisions shall be resolved in accordance with LHA (local housing authority) procedures consistent with HUD regulations covering such procedures."[112] A further circular detailed the procedures that the relevant housing authorities were to utilize in their grievance procedures. These grievance procedures provide for an impartial hearing, details as to the composition of the hearing panel, timely notice of the hearing date and hearing regulations, an opportunity for the tenant to present evidence and confront his accusers and written notification of the decision.[113]

The case turned upon the character of the HUD circular and a fortiori, the extent, if any, to which the local state housing authority was bound by it. The first question then faced by Justice Kluczynski was whether, under Federal Law, HUD had a general rule-making competence to issue the circular and if it did, whether the local authorities were bound by it. Under the United States Code, HUD is vested with general rule-making powers.[114] Pursuant to this grant of authority and in keeping with HUD's delegated responsibilities, HUD uses various techniques to ensure that its basic purposes as reflected within the umbrella of federal law are effectuated.

In a remarkably similar case, *Thorp v. Housing Authority*,[115] the Supreme Court of the United States held that the procedure incorporated in the HUD circular had to be applied to all tenants who were still living in such housing projects at the time of its decision even though the circular had been issued during the pendency of the appeal. The implication drawn from *Thorp* was that the United

112. Renewal and Housing Management Circular, HUD, RHM 7465.8 at 2-4 (Feb. 22, 1971). The defendant also cited Thorp v. Housing Authority, 393 U.S. 268 (1969).

113. Renewal and Housing Management Circular, HUD, RHM 7465.9 (Feb. 22, 1971).

114. 42 U.S.C. 1403, 1408 (Supp. V, 1964). Thus HUD "has established minimum requirements for Local Authorities . . . operating HUD-aided low-rent public housing. . . . The basic requirements are set forth in the various contracts . . . such as . . . the Annual Contributions Contract. . . . Supplementary requirements and advisory material for Local Authorities are contained in handbooks, circulars, guides and bulletins issued for the low-rent public housing program. . . . Circulars are used to issue policies and procedures on subject matter which . . . is scheduled for eventual consolidation into Handbooks. . . ." Low-Rent Housing Administration of Program Handbook, HUD, RHM 7401.1 at 1-2 (May, 1970).

115. 393 U.S. 268 (1969).

States Supreme Court was obviously giving "retroactive effect even though judgment for possession had been entered against a tenant still residing in federally assisted public housing."[116] The question realistically speaking was, how could *Thorp* not apply? The plaintiffs attempted to show, unsuccessfully, that these regulations changed the terms of the annual contribution contract they had with HUD and their lease agreement with Harris. While in a formal sense one cannot say that the regulations in "some" degree do not "change" the respective agreements, the plaintiff could not show the court any "specific infringements"[117] and even if they were shown, infringements would clearly have had to have been of a substantial character. In short, this is a submission based upon a conceptual premise that can only be described as arid. Indeed, and this revelation borders upon the incredible, the plaintiff in an earlier case in a federal court entered into a consent decree which provided "substantially similar grievance procedures as those outlined in the HUD circular in cases involving lease terminations for reasons other than nonpayment of rent."[118]

Plaintiff's second argument also trespassed upon an excessive degree of formalism. Plaintiff argued that it was not bound by the HUD circular because it failed to meet the requirements of the Administrative Procedure Act[119] since there had been no prior announcement of the proposed rule making by HUD and that notice of the regulation was not published in the Federal Register.[120] Justice Kluczynski reasoned[121] that the HUD circular was issued as a "supplement" to the annual contract and as such came within the explicit wording of the Administrative Procedure Act which excludes notice where the proposed rule making involves "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts."[122]

116. 49 Ill. 2d 274, 277, 275 N.E.2d 353, 355 (1971).

117. The term is obviously ambiguous. In interpreting the language here, as we have noted in the text, even if specific infringements were to mean specific changes, those changes would only be material if they substantially altered the meaning and scope of the contracts. This would be seen and interpreted in terms of "degree."

118. 49 Ill. 2d 274, 277, 275 N.E.2d 353, 355, citing Shepard v. Chicago Housing Authority, C.C.H. Pov. L.R. § 12,760 (Feb. 16, 1971).

119. 5 U.S.C. §§ 551 *et seq.* (1970).

120. *Id.* at §§ 553(b), 552(a)(1)(D).

121. Citing Thorp v. Housing Authority, 393 U.S. 268 (1969).

122. 5 U.S.C. § 553(a)(2) (1970).

Moreover, with regard to the non-publication of the circular in the Federal Register, the Administrative Procedure Act in effect discards the requirement where there is "actual and timely" notice of the terms of the rule or order.[123] In this case the court had no difficulty in establishing that plaintiff had notice that could be construed as actual in law.[124]

The final question was whether the circular was "mandatory" or "advisory." Here the language of the regulation made the point with unmistakable clarity. "Each housing authority," it said, "shall adopt procedures or revise existing grievance procedures to embody, as a minimum, the following standards and criteria."[125]

BIAS OR PREJUDICE AS A DISQUALIFICATION

Mank v. Board of Fire & Police Commissioners[126]

In this case Justice Smith considered, *inter alia,* the question of whether prima facie discharged city policeman Louis Mank had been accorded a fair hearing in respect to charges filed with the board of Fire & Police Commissioners of Granite City. Thirteen charges were filed and the board sustained six of those charges. The Circuit Court of Madison County held that it was impossible for Mank to receive "a fair and impartial hearing"[127] because one of the members of the board was also "the father of the complainant."[128]

Justice Smith stated that in administrative hearings involving licenses and employment a person "charged is entitled to be tried before a disinterested board,"[129] citing a license revocation decision of the Supreme Court of Illinois wherein the court stated, among other things, that:

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123. *Id.* at § 552(a)(1).

124. 49 Ill. 2d 274, 279, 275 N.E.2d 353, 356 (1971). "Moreover, plaintiff's oral argument in the instant case makes continual references to circulars issued on February 22, 1971. Thus it is patent that plaintiff had actual notice of these circulars."

125. Renewal and Housing Management Circular, HUD, RHM 7465.9 at 2 (Feb. 22, 1971).

126. 7 Ill. App. 3d 478, 288 N.E.2d 49 (1972).

127. *Id.* at 480, 288 N.E.2d at 51.

128. *Id.* at 481, 288 N.E.2d at 51.

129. *Id.* at 484, 288 N.E.2d at 53.

> It is a classic principle of jurisprudence that no man who has a personal interest in the subject matter of a decision may sit in judgement on that case.
>
> The principle is as applicable to administrative agents, commissioners . . . or other arbiters of questions of law or fact not holding judicial office as it is to those who are technically judges in the full sense of the term.[130]

Justice Smith, therefore, reasoned that the function of the board in the instant case was a "judicial" one.[131] One might take issue with such a characterization, for the implications of the term "judicial" are more substantial than mere terminological preference would seem to imply. Indeed the experience in English administrative process is most instructive in this regard. Broadly speaking, the English courts took the term "judicial" to include the notion of "administrative" without any adequate conception of why it was that administrative proceedings should fall within the bounds of the so-called natural justice principles.[132] The result, beginning with decisions of licensing authorities, was that the English courts took the view that as such decisions were not "judicial" in character, certiorari could not control the liquor-licensing functions of magistrates. While these difficulties were nipped in the bud at a very early stage[133] the problems revolving around proceedings "judicial" as distinct from "administrative," again began to emerge in the context of licensing cases where the tenor of decisions suggested that when an act was "administrative it was not judicial."[134] The implication was that where a decision was purely "administrative" natural justice principles need not necessarily apply. This development "shook the whole basis of the prerogative remedies in England. For it was no longer possible to be sure what the courts meant by "judicial," or when they might turn around and say that, because an act was administrative, it could not be controlled."[135] The English lawyers then used the term "quasi-judicial" to expand the scope of review and so to insist on the application of natural justice principles to cases characterized as "quasi-judicial."[136] Again, as Wade

130. In Re Heirich, 10 Ill. 2d 357, 384, 140 N.E.2d 825, 838 (1956).

131. 7 Ill. App. 3d 478, 484, 288 N.E.2d 49, 53 (1972).

132. Ridge v. Baldwin, [1964] A.C. 40 is the Locus Classicus.

133. Rex v. Woodhouse, [1906] 2 K.B. 501; Frome United Breweries Co. v. Bath Justices, [1926] A.C. 586.

134. WADE, ADMINISTRATIVE LAW 135 (3rd ed. 1971).

135. *Id.*

136. Compare the following: "*In limine,* an administrative agency is not a

points out, this phrase had the advantage of having an obscure meaning so that by simply describing administrative decision-making as quasi-judicial, in practice the courts were able to allocate to themselves that degree of judicial discretion which would ensure essential fairness in administrative process consistent with the nature and functions of the particular agency under review.[137] In effect, this has come to mean that so long as there is power to affect the rights of citizens (subjects in England) then the correlative of that power is the liability on the part of the decision maker to act within the bounds of fairness implicit in natural justice principles. "The power and the duty go hand in hand."[138] As is evident, the technical meaning ascribable to the terms judicial and quasi-judicial could conceivably lead to a restrictive view of the applicability of natural justice principle inherent in due process. Such terminological confusion should be guarded against with all the analytical vigor we can muster.

The court analyzing and refining the concept of fairness stated that "Bias and prejudice is an elusive condition of the mind and may even unconsciously exist in the person who would sincerely contend that he has no bias or prejudice."[139] The court, therefore, found that the relationship between the police commissioner who was the charging party and his father who was a member of the board, was too close to render a disinterested, fair and impartial hearing. Justice Smith added that "[r]elationship by blood is sufficient to disqualify a judge in hearings"[140] and that the commissioners in this case were "judges in the full sense of the word."[141]

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court and may not therefore exercise judicial powers. It may however, exercise 'quasi judicial' powers incidental to its administrative powers—meaning in substance that an administrative agency may properly exercise a judicial discretion in the making of findings of fact and the determinations based thereon pursuant to its delegated powers." (Footnotes omitted) Hunt, *supra* note 5, at 647.

137. Because, therefore, the phrase "quasi judicial" is itself something of a term of art, it has been criticized. There is implicit in the terms an obscurity of meaning so that the possibility of excluding the fairness standards may result in situations when they ought to be applicable in agency proceedings.

138. WADE, *supra* note 134, at 137.

139. 7 Ill. App. 3d 478, 484, 288 N.E.2d 49, 53 (1972).

140. *Id.*

141. *Id.*